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Supreme Court, U.S.
FILED
MAY 6 1935
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. ~~345~~ 43

CLYDE MALLORY LINES,

Appellant,

vs.

STATE OF ALABAMA, EX REL. STATE DOCKS COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA.

STATEMENT AS TO JURISDICTION.

ROSCOE H. HUPPER,
ALEXIS TARDY GRESHAM,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 945

CLYDE MALLORY LINES,

Appellant,

vs.

STATE OF ALABAMA, EX REL. STATE DOCKS COMMISSION,

Appellee.

STATEMENT AS TO JURISDICTION ON APPEAL.

MAY IT PLEASE THE COURT:

The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents:

A.

Statutory Provision Sustaining Jurisdiction.

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 937 (United States Code, Title 28, Sec. 344), provides that Section 237 (a) of the Judicial Code is amended to read in part as follows:

"A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

B.

Statutes of the State the Validity of Which Is Involved.

State Docks Commission, a State agency of the State of Alabama, by order or resolution entered on February 25, 1924, prescribed, among other things, the payment of $7.50 for each vessel of 500 tons or over entering the Port of Mobile, Alabama; that order or resolution reading as follows:

"Alabama State Docks Commission,

Mobile, Alabama.

February 25th, 1924.

The regular monthly meeting of the State Docks Commission was held this day in the office of the Commission. Among other business transacted the following schedule of charges for Harbor Fees was adopted:

General Sibert presented to the Commission for consideration, a schedule of charges to be collected by the State Docks Commission for Harbor Fees for the purpose of meeting the expense attendant upon the super-

vision of the Port and execution of the regulations and providing for the proper accommodation of vessels at this Port.

Governor Henderson moved, seconded by Mr. Blair, to adopt the schedule of charges of Harbor Fees, effective March 1st, 1924, as follows:

Tugs engaged in coastwise towing, per trip	$2.50
Vessels under 500 tons, making weekly trips	2.50
Vessels under 500 tons	5.00
Vessels 500 tons and over	7.50
Shifting vessels in the harbor, 1,000 tons and over	10.00
Shifting vessels in the harbor, under 1,000 tons	5.00
Shifting vessels to or from Twelve Mile Island	20.00
Shifting vessels to or from Chichasaw Creek, inside L. & N. Bridge	15.00
Mooring vessels, under 1,000 tons	5.00
Mooring vessels, 1,000 tons or over	10.00''

(R. 20.)

An order of State Docks Commission of February 11, 1928, provided that "The Port Rules, Regulations and Fees governing the Port of Mobile were unanimously adopted." Said order further provided:

"Resolved, That the State Docks Commission, in virtue of and acting under the police and other powers of the State with which it is invested by Section 93 of the Code of Alabama, and the provisions of Sections 3, 6 and 18 of the State Docks Commission Act, approved January 17, 1927, which sections or portions thereof are set forth below:

"Section 3. The jurisdiction of the Commission in any harbor or seaport within the State shall extend over the waters and shores of such harbor or seaport and over that part of all tributary streams flowing into such harbor or seaport in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbor or seaport.

C.

Date of Judgment and Date of Application for Appeal.

The judgment sought to be reviewed was entered on the 24th day of January, 1935.

The application for appeal was presented on the 10th day of April, 1935.

Nature of the Case, Ruling Below, and Cases Believed to Sustain the Jurisdiction.

This action is a demand by the State of Alabama on relation of the State Docks Commission of the appellant, owner of vessels of over 500 tons each, engaged in interstate commerce, which made regular trips into the harbor of Mobile; for the payment of $7.50 for each entry of each vessel into said harbor, as prescribed in said orders of said Commission.

The demand was resisted on the grounds that those charges are duties of tonnage and an undue burden on interstate commerce: as such, violative of those portions of Sections 8 and 10, Article I, of the Constitution of the United States, providing respectively: "The congress shall have power: * * * To regulate commerce with foreign nations, and among the several states, * * *"; and "No state shall, without the consent of congress, lay any duty of tonnage, * * *"; and that, therefore, the orders of the Commission prescribing those charges are repugnant to the quoted Constitutional provisions.

The Supreme Court of the State of Alabama decided that said orders and charges were lawful and neither repugnant to nor violative of said provisions of the Constitution; and that, therefore, the State on the relation of the Commission may recover said charges of the appellant-shipowner in this action.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

King Manufacturing Company v. *City Council of Augusta et al.*, 277 U. S. 100.

Sultan Railway & Timber Company v. *Department of Labor, etc., of Washington*, 277 U. S. 135.

Lake Erie & Western R. R. Company v. *Public Utilities Commission*, 249 U. S. 422, 424.

Appleby v. *Delaney*, 271 U. S. 403, 409.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Section 237 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Respectfully submitted,

(Signed) ROSCOE H. HUPPER,
(Signed) ALEXIS TARDY GRESHAM,
Counsel for Appellant.